

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 20

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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***Ex parte*** C. ALEXANDER TURNER, JR.,  
BRIAN MATHUR, and  
D. WADE WALKE

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Appeal No. 2003-2029  
Application 09/878,764

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ORDER REMANDING TO THE EXAMINER

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On August 7, 2003, Appellants filed a Reply Brief (Paper No. 19), and a petition for an one (1) month extension of time under 37 CFR 1.136(a) (Paper No. 18). There is no indication on the record that these papers were considered by the examiner.

It is noted for both appellants and the examiner that 37 CFR § 1.193(b)(1) sets forth the requirements for the request for submission of a reply brief and is reproduced below.

§ 1.193. Examiner's answer and reply brief.

. . . . (b)(1) Appellant may file a reply brief to an examiner's answer or a supplemental examiner's answer within two months from the date of such examiner's answer or supplemental examiner's answer. See § 1.136(b) for extensions of time for filing a reply brief in a patent application and § 1.550© for extensions of time for filing a reply brief in a reexamination.

In the instant application, Appellants submitted the Reply Brief one month after

the expiration of the two month period from the date of the Examiner's Answer (Paper No. 19).

Accordingly, it is

ORDERED that the instant application be remanded to the Examiner to:

- (1) determine whether the Reply Brief filed August 7, 2003 was timely filed;
- (2) written notification to appellants of said notification; and
- (3) for such action as may be appropriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Dale M. Shaw  
Program and Resource Administrator

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